

U.S. DEPARTMENT OF ENERGY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
Office of Worker Health and Safety (EH-5)

CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM
Notice of Proposed Rulemaking (NOPR)
Docket Number EH-RM-98-BRYLM

PUBLIC HEARING AGENDA
February 3, 1999, Morning Session - Oak Ridge, TN

WATTS-BOYD REPORTING AGENCY
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PANEL

C. Rick Jones Presiding Official for the Hearing

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Office of Environment, Safety and Health

Jacqueline Rogers Industrial Hygienist
Office of Occupational Safety and Health
Policy (EH-51)
Office of Environment, Safety and Health

George Gebus Director, Office of Occupational
Medicine and Medical Surveillance(EH-61)
Office of Environment, Safety and Health

1 MR. JONES: Good morning and welcome. I am
2 Rick Jones, Director of the Office of Workers
3 Protection Programs and Hazards Management EH-52
4 within the Office of Worker Health and Safety. On
5 behalf of the Department of Energy, I would like to
6 thank you for taking the time to participate in this
7 public hearing concerning the proposed Chronic
8 Beryllium Disease Prevention Program (CDBPP),
9 particularly those of you who have come from some
10 distance.

11 The purpose of this hearing is to receive
12 oral testimony from the public on DOE's Notice of
13 Proposed Rulemaking, NOPR. Your comments are not
14 only appreciated, they are essential to the process.

15 The publishing of the NOPR that is the
16 subject of today's public hearing has been preceded
17 by two years of information gathering and data
18 analysis by the Department. In 1996, the Department
19 surveyed it's contractors to characterize the extent
20 of beryllium usage, the types of tasks involving
21 beryllium usage, the controls in place for each
22 task, and the estimated exposure levels associated
23 with each task. To supplement the data obtained from
24 the 1996 survey, the Department published a Federal
25 Register notice on December 30th, 1996 requesting

scientific data, information, and views relevant to
a DOE beryllium health standard. The survey and

Federal Register notice were followed by two

Beryllium Public Forums held in Albuquerque, New Mexico and Oak Ridge, Tennessee January 1997. While the Department moved forward with its rulemaking process, an Interim Chronic Beryllium Disease Prevention Program was issued on July 15, 1997, as DOE Notice 440.1 to direct immediate action for the protection of workers while rulemaking efforts continued. The Interim Notice established a CBDPP that enhanced and supplemented worker protection programs already required by current worker safety and health orders with provisions that are designed to manage and control beryllium exposure hazards in the DOE work place. Because of the complexity and significance of issues regarding the development of a DOE health standard for beryllium, a Beryllium Rule Advisory Committee or BRAC was established in June 1997 to advise the Department on issues pertinent to the proposed rulemaking activity. DOE also used the BRAC recommendations and the lessons learned in the implementation of DOE Notice 440.1 to develop this NOPR.

The objectives of the NOPR are to 1)

1 minimize the number of workers exposed to beryllium;
2 2) minimize the levels of beryllium exposure and the
3 potential for beryllium exposure; 3) establish
4 medical surveillance protocols to ensure early
5 detection of chronic beryllium disease; and 4)
6 assist affected workers who are dealing with
7 beryllium health effects. In addition, the
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9 Department intends to collect and analyze exposure
10 and health data as a part of its ongoing
11 beryllium-related research efforts to ensure the
12 protection of workers' health. DOE will consider
13 amendments to its regulations as additional
14 information and feedback are collected.

If you have not read the Federal Register

15 notice from December 3, 1998, I urge you to do so.
16 Copies are available at the registration desk in the
17 back.

18 The comments received here today and those
19 submitted during the written comment period, which
20 ends March 9, will assist the Department in the
21 rulemaking process. All written comments must be
22 received by this date to ensure consideration by the
23 Department of Energy. The address for sending in
24 comments is: Jacqueline D. Rogers, U.S. Department
25 of Energy, Office of Environment, Safety and Health,
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1 EH-51, Docket Number EH-RM-98-BRYLM, 1000
2 Independence Avenue SW, Washington, D.C., 20585.

3 As the Presiding Official for this hearing,
4 I would like to set forth the guidelines for
5 conducting the hearing and providing other pertinent
6 information. In approximately fourteen days, a
7 transcript of this hearing will be available for
8 inspection and copying at the Department of Energy's
9 Freedom of Information Reading Room in Washington,
10 DC as well as at the DOE Oak Ridge and Rocky Flats
11 Public Reading Rooms. The addresses are specified in
12 the Federal Register notice and are also available

13 at the registration desk. The transcript will also
14 be placed on the Environment, Safety and Health's
15 Chronic Beryllium Disease Prevention Program's
16 Internet web page which can be accessed at:
17 <http://tis.eh.doe.gov/be/>. In addition, anyone
18 wishing to purchase a copy of the transcript may
19 make their own arrangements with the transcribing
20 reporter.

21 This will not be an evidentiary or judicial
22 type of hearing. It will be conducted in accordance
23 with Section 553 of the Administrative Procedures
24 Act, 5 USC section 553 and section 501 of the DOE
25 Organization Act, 42 USC section 7191. To provide
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1 the Department with as much pertinent information
2 and as many views as can reasonably be obtained, and
3 to enable interested persons to express their views,
4 the hearing will be conducted in accordance with the
5 following procedures: speakers will be called to
6 testify in the order indicated on the agenda;
7 speakers have been allotted ten minutes for their
8 verbal statement; anyone may make an unscheduled
9 oral statement after all scheduled speakers have
10 delivered their statements. To do so, please submit
11 your name to the registration desk in the back
12 before the conclusion of the last scheduled speaker;
13 and at the conclusion of all presentations,
14 scheduled and unscheduled speakers will be given the
15 opportunity to make a rebuttal or clarifying
16 statement. Again to do so, please submit your name
17 to the registration desk in the back.

18 Questions for the speakers will be asked
19 only by the members of the DOE panel conducting the
20 hearing.

21 As I explained, the purpose of this hearing
22 is to receive testimony from the public on the DOE's
23 Notice of Proposed Rulemaking. It is not the
24 purpose of this hearing to discuss individual
25 lawsuits that have been filed in court, or claims
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1 that have been filed under the Federal Tort Claims
2 Act. This panel will therefore not discuss
3 litigation or claims. Instead, I urge all speakers
4 to provide this panel with their comments, opinions
5 and pertinent information about the proposed rule.
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7 As mentioned before earlier, the close of
8 the comment period is March 9, 1999. All written
9 comments received will be available for public
10 inspection at the DOE Freedom of Information Reading
11 Room in Washington, D.C. which can be reached at
12 area code (202) 586-3142. Ten copies of the
13 comments are requested. If you have any questions
14 concerning the submission of written comments,
15 please see Andi Kasarsky at the registration desk.
16 She can be reached at area code (202) 586-3012.

17 Any person submitting information which he
18 or she believes to be confidential and exempt by law
19 from public disclosure should submit to the
20 Washington, D.C. written comments address a total of
21 four copies, one complete copy with the confidential
22 material included and three copies without the
23 confidential information. In accordance with the
24 procedures established at 10 CFR 1004.11, the
25 Department of Energy shall make its own
26 determination as to whether or not the information

1 will be exempt from public disclosure.

2 In keeping with the regulations of this
3 facility, there will be no smoking in this room. I
4 would also ask you to please take note of the four
5 exits, two in the front, two in the back. Also note
6 that restrooms, drinking fountain and pay phones are
7 located out at the rear exits and to the left.

8 We appreciate the time and effort you have
9 taken in preparing your statements and are pleased
10 to receive your comments and opinions. I would now
11 like to introduce the other members of the panel.
12 Joining me today to my left is Jacqueline Rogers,
13 who is an industrial hygienist from the Office of
14 Occupational Safety and Health Policy EH-51 within
15 the Office of Worker Health and Safety. Also
16 joining me today is Dr. George Gebus, Director of
17 the Office of Occupational Medicine and Medical
18 Surveillance EH-61 within the Office of Health
19 Studies. I would also like to acknowledge the
20 presence of managers, first line supervisors and
21 safety and health professionals from the local DOE
22 office, the Y12 Plant and Bechtel Jacobs.

23 This introduction has been lengthy, but I
24 hope useful. Now it is time to move on to the reason
25 why we are all here - to listen to your comments on
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1 the Notice of Proposed Rulemaking.

2 I would like to call our first speaker on
3 the agenda. For the record, I would ask that each
4 speaker please state his or her name and whom they
5 are representing before making their statement. I
6 would like to thank you all very much and I would
7 like to go ahead and call the first speaker. There
8 has been a change in the order of speakers. Mr.
9 Foster and Mr. McDonald have changed places on the
10 agenda so I would like to call Mr. Gary Foster to
11 the podium.

12 MR. FOSTER: Good morning. I'm Gary Foster
13 and I've been diagnosed with berylliosis, which
14 occurred from my exposure to beryllium at Y12 Plant
15 near in Oak Ridge.

16 This morning I'm going to limit my comments
17 to only four of the proposed sections of 10 CFR 850,
18 as published in the Federal Register on December

19 3rd, 1998. I plan to present these and other more
20 extensive written comments later. The four proposed
21 sections I wanted to address this morning are:

22 850.22 850.23, 850.33 and 850.34.

23 In regard to these four sections, I'm
24 asking that the DOE insert language into 10 CFR 850
25 which will accomplish the following:
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1 Provide us with a place of employment that
2 is free of this recognized hazard...beryllium
3 contamination.

4 Mandate that each of us will have the
5 opportunity to be followed by the most experienced
6 and knowledgeable physician of our choice.

7 Provide those who are diagnosed with
8 berylliosis and sensitized true medical removal
9 protection by adopting language which will protect
10 our jobs, benefits, seniority, and stability with
11 wording at least as protective as 29 CFR 1910.1028.

12 1) In proposed section 10CFR 850.22, we
13 find that despite the DOE's knowledge of the
14 toxicity and hazards associated with beryllium
15 exposure and the knowledge of cases of berylliosis
16 diagnosed in workers who had beryllium exposures far
17 below two micrograms per cubic meter, the DOE has
18 failed to recognize and use medical and scientific
19 knowledge in proposing effective change in this
20 beryllium rule. This rule fails to provide for the
21 health and safety of DOE and DOE contractor
22 employees who may come in contact with beryllium
23 contamination. The DOE points out in the Federal
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Register on page 66955, "There is scientific
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evidence (presented in the Health Effects discussion
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1 of this NOPR, Section IV) that suggests that the
2 current exposure limit does not such sufficiently
3 protect worker health."

4 In July 1994, the DOE issued a Health
5 Hazard Alert which stated, and I quote, "Two
6 recently conducted studies designed to test how well
7 a new blood test (called lymphocyte proliferation
8 test) could detect CBD, found CBD in craft workers
9 and white collar workers thought to only have had
10 occasional, low level exposure to beryllium. These
11 results suggest that compliance with current
12 exposure limits for beryllium are not sufficient for
13 protecting workers against CBD."

14 There also exists the information on the
15 neighborhood cases in Lorain, Ohio from the late
16 1940's in which the Atomic Energy Commission (AEC)
17 found that levels of exposure in the range of
18 one-tenth of microgram per cubic meter was
19 associated with berylliosis (see your reference 4,
20 Federal Register page 66968).

21 That there is scientific evidence that
22 beryllium exposure is hazardous at any level above
23 zero and for short durations of exposures is all the
24 information that is needed for this exercise. For
25 the DOE to continue to retain the OSHA PEL of two
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1 micrograms per cubic meter and in proposed section
2 850.23, to adopt an action level where any exposure
3 is allowed, is counter to DOE 440.1A, 4a. (1) which
4 states, and I quote, "DOE elements shall implement a
5 written worker protection program which provides a
6 place of employment free from recognized hazards
7 which are causing or likely to cause death or
8 serious physical harm to their employees."
9

10 The DOE definition of a hazard can also be
11 found in DOE manual 411.1-1 and is stated as:
12 Hazard: a source of danger (i.e., material, energy
13 source, or operation) with the potential to cause
14 illness, injury or death to personnel or damage to
15 an operation or to the environment (without regard
16 for the likelihood or credibility of accident
17 scenarios or consequence mitigation).

18 A beryllium hazard is recognized by the DOE
19 and has been shown to exist by the Department's own
20 studies as indicated in this NOPR (Pages Federal

Register 66943-66947). There is nothing in DOE

21 440.1A that states that this section 4a (1) applies
22 to everyone except beryllium workers. There is
23 nothing to argue and thae course of action can be no
24 clearer. Provide us with a place of employment that
25 is free of this recognized hazard...beryllium
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1 contamination. It doesn't matter what the OSHA does
2 or does not do. The DOE is self-regulating and is
3 responsible for its contractor employee health and
4 safety. A hazard has been recognized and now it
5 must be abated. The action level of five-tenths of
6 a microgram per cubic meter as found in proposed
7 section 850.23, does not satisfy this requirement of
8 DOE 440.1A and therefore the action level must be
9 set at any detectible level of contamination. DOE
10 line management is responsible for adherence with
11 DOE 440.1A, and this rule must reflect that
12 language.

13 2) In proposed section 850.33, there are
14 some inadequacies of the Medical Surveillance
15 Program. A change in section 850.33(d) must include
16 all workers exposed above detectible levels, not the
17 proposed action level of five-tenths a microgram per
18 cubic meter. The DOE acknowledges that personnel
19 who are incidentally exposed are at risk (Federal
20 _____
_____ Register page 66946) and to exclude them from the

21 process is both immoral, unethical and quite frankly
22 makes no sense. It appears that most of Y12's
23 machinists would not have been eligible for medical
24 surveillance under the guidelines of the proposed
25 section 850.33. Support workers definitely would
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not fall under the definition. I am one of those that in all likelihood would not have been under medical surveillance.

One major inadequacy of the proposed sections 850.22 (i) and (j), that I am currently facing in my life, is although the preceding sections identify those of us who eventually contract berylliosis, it does absolutely nothing to provide us with adequate health care after the diagnosis. We are dumped onto the existing Workman's Compensation system, which is woefully inadequate for a disease such as berylliosis. In particular, those of us from Y12 are geographically separated from the centers of expertise in regard to berylliosis. Because of this, we are receiving inadequate treatment and monitoring. As you are well aware, there are only two true centers of expertise in this country where a berylliosis patient can expect to be treated by experts in the field of beryllium-related diseases. These two centers are the National Jewish Center in Denver and The Hospital of the University of Pennsylvania.

Those of us who have been diagnosed with berylliosis, and those who are sensitized to beryllium deserve to be followed by the experts in

1 the field of beryllium-related diseases. We must be
2 able to chose between the two centers; and since DOE
3 is responsible for our condition, the DOE must
4 provide us with the quality care that we deserve. To
5 dump us on the local medical pulmonologist community
6 is not providing us with quality care. Although my
7 pulmonologist diagnosed the first case of
8 berylliosis from Y12, he has twice stated to me: "I
9 don't really know what to do with you guys."

10 The basic reason for the entire program
11 that has identified us was that we could be
12 identified early so medical intervention might
13 attempt to slow the progress of berylliosis. If we
14 do not receive the same regimen of testing as
15 offered by the experts then all the data gathered on
16 us will be useless. To waste our experience is akin
17 to the mistakes made for the first forty plus years
18 of this disease when there was inconsistent data
19 entered into the Beryllium Case Registry. These
20 inconsistencies allowed investigators to develop
21 conclusions which were counter to the facts. If the
22 data gathering had been uniform and complete for the
23 first thirty years, I might not be here in front of
24 you today. Let's not allow the same mistakes in
25 1999. Mandate that each of us will have the
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1 opportunity to be followed by the most experienced
2 and knowledgeable physician. Don't waste our
3 experience.

4 3) Proposed sections 850.34(a),(3) and
5 850.34(b) are completely unacceptable. These are
6 the medical removal plan and the medical removal
7 protection plan.

8 Those of us with berylliosis are only in
9 this position because of the historical and
10 continued insistence of the DOE to perform work with
11 beryllium. The DOE and its predecessors have known
12 for over fifty years that some percentage of
13 individuals exposed even to minute amounts of
14 beryllium would become stricken with berylliosis.

15 Berylliosis does not generally present
16 those affected with a quick death. Essentially the
17 majority of us will slowly smother to death.
18 Apparently we will experience good days and bad
19 days, but the general course of this disease is
20 downward sloping, as the DOE has recognized on page
21 66943 of the Federal Register. Those of us still

22 working will need the stability of our jobs and
23 benefits we have accrued...more in two years from
24 now than we do today. Two years from now we will
25 need them even more than ever.
26

In proposed sections 850.34(a),(3) and

850.34(b) the DOE is avoiding its liability which it incurred because the Department failed in its responsibility to protect the health and safety of its contractor employees. These proposed sections do nothing to force the Department to accept its responsibility to protect the health and safety of its contractor employees. These sections do nothing for the employee, in the event of the failure of the DOE to accept its responsibility, to protect the health and safety of contractor employees. An accurate read on these proposed sections is simply two years and you are out. This is the way the contractors are going to read these proposed sections. Being responsible means that in the case of fault, one incurs a penalty. The only penalty incurred with these proposed sections is approved by the affected employee. This penalty is the loss of meaningful employment, benefits and stability at a time when these things will be most needed.

As an alternative to proposed sections

850.34(a),(3) and 850.34(b) I ask that the DOE adopt language that is at least as protective of the affected personnel as is found in 29 CFR 1910.1028,(i),(8),(v), which is the OSHA Standard

1 for benzene. Section (v) states: whenever an
2 employee is removed permanently from benzene
3 exposure based on a physician's recommendation
4 pursuant to paragraph (i)(8)(iii) of this section,
5 the employee shall be given the opportunity to
6 transfer to another physician which is available or
7 later becomes available for which the employee is
8 qualified, or can be trained for in a short
9 period, and where benzene exposures are as low as
10 possible but in no event higher than the action
11 level. The employer shall assure that such employee
12 suffers no reduction in current wage rate, seniority
13 or other benefits as a result of the transfer.

14 Obviously in regard to beryllium, any
15 transfer must be to a job which is free from
16 beryllium exposure, because of the immunological
17 reaction to beryllium exhibited by those of who are
18 diagnosed and those who are sensitized. The
19 contractors will only do what the DOE tells them to
20 do under this rule. If the DOE tells the contractor
21 to put us out on the street in two years, that is
22 exactly what they will do. If the DOE promulgates a
23 rule that offers real medical removal protection
24 benefits, then the contractor will be obligated to
25 find us meaningful employment which is free from the
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1 recognized hazard of beryllium contamination. Only
2 then will the employees feel free to make an
3 informed choice as to whether they want to be tested
4 or not. Proposed sections 850.34(a),(3) and
5 850.34(b) would effectively reduce those
6 volunteering to be tested to the group of people who
7 are already retired or separated from employment and
8 those who are within two years of retirement. The
9 rest of the population would not take the risk of
10 losing their jobs, and therefore their livelihood,
11 and they would forego testing.

12
13 Once again, there are at least three things
14 that must be changed in proposed 10 CFR 850. The
15 DOE must: provide us with a place of employment that
16 is free of this recognized hazard...beryllium
17 contamination. Mandate that each of us will have
18 the opportunity to be followed by the most
19 experienced and knowledgeable physician of our
20 choice. Provide those of us who are diagnosed with
21 berylliosis and sensitized true medical removal
22 protection by adopting language which will protect
23 our jobs, benefits, seniority, and stability with
24 wording at least as protective as 29 CFR 1910.1028
25 Thank you.

26 MR. JONES: Thank you, Mr. Foster, for your

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insightful comments. Does the panel have any
questions? Thank you very much. Our second speaker
today, scheduled speaker is Glenn Bell. Is Mr. Bell
in the room? Would Mr. McDonald be prepared to
present his comments at this time? If you could,
please state your name, and the organization which
you represent.

MR. MCDONALD: If I appear and sound
nervous it's because I am. I have never addressed
anybody from Washington, D.C. before. I can't even
get in touch with my own Congressman up there. My
name is Jesse McDonald. I'm speaking for myself.
I'm a maintenance supervisor at the Y12 Lockheed
Martin Plant and have been there for almost -- four
months from today would have been thirty-one years.
And I hope to confine my comments to the medical
surveillance section. It mainly will fall somewhere
in between 850.33 and dot 34. My focal point or my
main point is to suggest that the LPT be made
mandatory for former and active beryllium workers
with certain conditions attached. And I hope to
offer five points or reasons that will support my
position. Number one is my situation that occurred
last year. Number two is present medical
surveillance policy at the plant. And number three

1 is what other government agencies do other than DOE.
2 And number four is information from the Jewish
3 Medical Center. And number five is statistics from
4 your own 10 CFR 850 and overview section Roman
5 numeral IV-E.
6

7 About my own self, last year I was told
8 that under the new policies, beryllium policy, I was
9 told to get myself qualified to be an active worker.
10 Since I'm unsupervised, what I did was took the
11 classroom training and then I was told to get my
12 medical surveillance which consisted of an x-ray
13 which tested normal and I was given a breathing test
14 which tested normal. Then I was asked if I wanted
15 to take the LPT test which is optional. I took the
16 LPT test. The results came back abnormal. So the
17 first LPT came back abnormal. So I was asked to
18 take a second LPT test. It also came back abnormal.
19 I was then immediately restricted from working with,
20 on or around beryllium. I was sent to Vanderbilt
21 University in Nashville for further testing. The
22 final diagnosis was the oh, we got some good news
23 and some bad news. It kind of reminds me of the guy
24 who was feeling bad and he said doctor, I'm sick.
25 He says something is wrong with me. The doctor said
26 come here and we will give you an examination. So he

1 took a blood test, an x-ray. He said when I get my
2 results back, I will call you back in and let you
3 know what went on. So in a few days, the doctor
4 called him back in. He said I've got some good news
5 and bad news for you. He said what's the good news?
6 The good news is you've got two days to live. He
7 said what can be the bad news? He said I should have
8 told you yesterday. So here I am faced with this
9 good news bad news deal. When I got this report
10 back, I was so afraid of it that I sat on it for a
11 month. And the day that I came to work was the day
12 that Dr. Newman was here from the Jewish Medical
13 Center. He had a seminar that he talked to the
14 beryllium support people. So I asked him to look at
15 this thing and explain to me what it meant. What he
16 looked at was the good news, that the biopsy showed
17 that I had no lung damage. My breathing tests were
18 normal. The not so good news that reconfirmed that
19 my LPT showed that I was sensitive and the lavage
20 test, where they use a saline solution to flush your
21 lungs out with, it was also positive, so I had two
22 positive tests. Now what did this mean? It means
23 that neither the x-ray or the breathing test
24 detected my sensitivity. And incidentally, the
25 diagnosis was that I was sensitive. I probably had
26

1 the early stages of chronic berylliosis. And what
2 this means is that neither the x-ray or the
3 breathing test detected the sensitivity or the early
4 changes of chronic beryllium and had I not
5 voluntarily taken the LPT test, I would have never
6 known. It was detected only by an abnormal LPT
7 test. That's one point that would support my theory
8 that LPT should be made mandatory. One is the
9 present policy. So I asked the medical doctor, why
10 don't you make everybody take this and they said
11 it's not mandatory. We can't make everybody take it.
12 But at the plant, we have peoples -- we do have
13 mandatory medical surveillance. Peoples in our
14 protective forces out there have to undergo certain
15 medical, mandatory medical; it's not an option.
16 Peoples in the health service have to undergo
17 mandatory and it's not an option. Entrance into
18 many of the radiological areas out there require
19 that I be in a medical surveillance program. That is
20 mandatory. It is not an option. So that's supports
21 point two. Number three is what other government
22 agencies do. And I think you all are just as
23 powerful as the NTSB I hope. You don't deal with
24 public transportation. When you're dealing with
25 public transportation and you're flying an airplane
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1 25
2 and you are involved in a crash and you survive,
3 they will take a mandatory blood test. And if
4 you're driving a train and have an accident, they
5 will take a mandatory blood test. If you're driving
6 an eighteen wheeler and have an accident, you will
7 take a mandatory blood test so the NTSB has the
8 authority to impose certain medical surveillance on
9 people and I can't see why it can't be done on the
10 LPT. So that's three more points. And then I want
11 to read to you some information I collected off a
12 web site from the Jewish Medical Center on the
13 subject of LPT testing. It says any screening for
14 CBD should begin with LPT for sensitivity detection
15 and x-rays. The LPT can detect abnormalities
16 earlier than a breathing test and x-ray. The LPT
17 identifies beryllium sensitivity and full CBD
18 earlier and better than any other clinical test
19 presently available. In every work force studied to
20 date, the LPT has identified beryllium sensitivity
21 and CBD that had been missed by conventional
22 screening efforts such as x-rays and breathing tests
23 and further more they go on and say the LPT is
24 cheaper than x-rays. And they go on to say that the
25 LPT is the cornerstone of beryllium medical
26 screening in industry and is the most definitive

test for detecting sensitivity and early signs of
CBD. So that's four points there to support my
argument that the LPT should be mandatory. Then I
want to look at your 10 CFR 850. It's in the
overview section Roman numeral IV-E. In there you
stated that there were seventy-nine cases of CBD
that you looked at at Rocky Flats. Seventy-three
were detected by abnormal LPTs that showed normal
x-rays or breathing tests. That's the strongest
argument that I can give you that the LPT should be
mandatory as part of your medical screening tests.
You don't have to add it up. It comes up to
ninety-two point four percent of the cases that they
x-rayed and the breathing tests did not pick up.
And I think that the information I have presented to
you here supports that, including my situation, what
other government agencies do and the information of
the National Jewish Medical Center and the deal with
the Rocky Flats that is stated in your 10 CFR. So
this clearly shows beyond any refutable doubt that
the LPT is far superior to the x-ray and breathing
test in detecting sensitivity and CBD and therefore
should be made mandatory for CBD screening in
addition to the x-ray and breathing test. After
making and LPT mandatory, workers should be told

1 that a postitive -- to get around the argument that
2 my speaker before me said, fear of losing your job,
3 you all talked about this, we can get around this by
4 telling people we're going to make the LPT
5 mandatory, but if the test comess back positive or
6 negative, you have the opportunity to not let it
7 affect your place of employment by signing a consent
8 form and on the 850-34(a), you stated that if it was
9 voluntary, they could sign a consent form to be
10 taken out of that area. And 850-34(a)(2), they
11 would also be given an opportunity to sign a consent
12 form to stay in that area if they come up with two
13 LPTs, so if you implemented the two items in
14 850-34(a) and 850-34(a)(2), that would eliminate the
15 fear of someone losing their job. Make the test
16 mandatory, but tell them up front you have the
17 option to seek further testing and I think you will
18 get a lot more participation this way and the
19 company will not have to go out of their way. They
20 can include the LPT in their normal annual physical
21 examination at no charge and as Grandma Pile says,
22 Gomer says if you are going to have something bad to
23 say, say something good. And some additional
24 comments I have. I support the idea in the overview
25 there of using certified industrial technicians to
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1 28
2 perform surveillances and monitoring. I think
3 that's a very good idea. It shouldn't be someone
4 that just completed two years out of Roane State and
5 ran around with somebody else out there for three
6 weeks and then go out there and is monitoring. Also
7 I support the sign posts and ideas in 850-51 which
8 go much further than what Lockheed Martin has done.
9 In there, it tells you that it can affect your lungs
10 and it tells you that it is a cause of -- cancer
11 causing agent. We do not go that far at Y12. And I
12 also support the argument in the medical community
13 for lower the exposure limit which my predecessor
14 talked about quite a bit there. Have I confused you
15 or do you understand my points that I tried to make?

16 MR. JONES: Thank you, Mr. McDonald, for
17 your meaningful comments. Does the panel have any
18 questions?

19 MR. MCDONALD: I Thank you for this
20 opportunity to speak and I can tell my grandson I
21 met someone from D.C.

22 MR. JONES: Thank you very much. We
23 appreciate that. Has Mr. Bell shown up yet?

24 MR. MACDONALD: He's out with CBD problems.
25 He had trouble breathing the other day and he had to
26 leave work. He couldn't breathe.

1 MR. JONES: Do we have any other speakers
2 signed up at this time? Is there any one else that
3 would like to speak at this time concerning our
4 Chronic Beryllium Disease Prevention Program Notice
5 of Proposed Rulemaking? Okay. Then I've got
6 basically nine-forty a.m. I would like to adjourn
7 this public hearing at this time until we get an
8 additional speaker signed up. This is to go on til
9 one o'clock. At that time, we will adjourn at one
10 o'clock. We will reconvene tonight at six o'clock
11 to go from six to nine to give the opportunity for
12 folks who couldn't make it this morning to come this
13 evening and make comments. So if no one would like
14 to make any other statements, I would like to
15 adjourn at this time and we'll reconvene between now
16 and one o'clock if we get any additional speakers
17 signed up, otherwise we will reconvene at six
18 o'clock this evening. Thank you all very much for
19 your participation and interest and we will see you
20 later.

21 (Whereupon, the hearing was adjourned.)

22 MR. JONES: We're going to reconvene for
23 just a couple of minutes. I would like to reconvene
24 the hearing. Let the record show it's ten-thirty and
25 we're reconvening the Department of Energy's Chronic
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1 Beryllium Disease Prevention Program and Notice of
2 Proposed Rulemaking public hearing. We have the
3 opportunity -- Glenn Bell had requested the
4 opportunity to make a presentation. He's unable to
5 make it. Mr. Gary Foster has his written
6 presentation and would like to read it into the
7 record.

8 MR. FOSTER: I'm going to read this as if I
9 were Glenn Bell and I appreciate you giving me the
10 opportunity to do this. Good morning. I am Glenn
11 Bell, a machinist at Y12 since 1968, diagnosed with
12 symptomatic CBD in '93. Ongoing related-CBD related
13 problems have prevented a thorough presentation of
14 comments as I had intended but I offer the following
15 and will follow-up with a written submission of
16 details as soon as possible.

17 Since my diagnosis in '93, there has been
18 some positive change in the education and protection
19 areas of beryllium hazards. CFR 850 offers an even
20 better chance to continue this trend, but in its
21 present form, it needs a tune-up, which I will
22 address in my written comments. Basically I am
23 concerned that offering rather than requiring
24 medical evaluations for Be workers. I am concerned
25 of the licensed physician with specialized knowledge
26

of beryllium references in 850. Such specialists are very scarce. Dr. Newman's recent visit to Oak Ridge has opened the door to improve this, but it is something that must be done given the orphan disease status of beryllium disease and sensitization. Special consideration for subcontractor and remediation has to be implemented. Some of these workers haven't a clue what they are working with. I would like to see more dedication from our own site personnel to worker protection. A recent comment was made on the proposal to implement a non-detectable limit impractical and too costly. If Marilyn Miller had been your wife, mother or sister, and Glenn had an overhead with her picture, we've got like a few handouts with her picture on oxygen, if she had been your wife, mother or sister, would impractical and costly have been an issue. And now her son has been diagnosed with CBD. If this is a picture of him at some point down the road. The recent meetings we attended on INEEL accident and fatality pointed to some deficiencies due to cutbacks, lack of Integrated Safety Management, and consolidation and reduction of resources. We need to evaluate the risk versus benefit to assure that this does not happen with the beryllium issues. ORO has over

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eighty cases of CBD/sensitization, with less than a fifty percent response rate from eligible workers and former workers. I feel many of these cases occurred because of production or liability was put ahead of worker safety. We have a chance to ensure this does not happen again. Let's not lose it this time. Glenn Bell.

MR. JONES: Thank you, very much, Mr. Foster. I appreciate that very much. No questions from the panel? Very good. Is there anyone else that would would like to speak? Okay. I would like to once again then adjourn the public hearings and we will be available until one o'clock. We will officially adjourn at that time to reconvene at that time at six p.m. Thank you very much for being here.

(Whereupon, the hearing was adjourned.)

MR. JONES: At twelve forty-five, there were no further speakers so we adjourned the morning session and we will reconvene at six.

(Whereupon, the hearing was adjourned.)

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C E R T I F I C A T E

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STATE OF TENNESSEE:

COUNTY OF KNOX:

I, Kimberly A. Watts, Court Reporter and Notary Public at Large, do hereby certify that I reported in machine shorthand the above testimony, and that the foregoing pages, numbered 1 through 32, were typed under my personal supervision and constitutes a true and accurate record of the proceedings.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel, nor financially interested in the action.

Witness my hand and official seal this the 15th day of February, 1999.

KIMBERLY A. WATTS
Notary Public at Large
My Commission Expires: 5/26/99.

U.S. DEPARTMENT OF ENERGY
OFFICE OF ENVIRONMENT, SAFETY AND HEALTH
Office of Worker Health and Safety (EH-5)

CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM
Notice of Proposed Rulemaking (NPR)
Docket Number EH-RM-98-BRYLM

PUBLIC HEARING AGENDA
February 3, 1999, Evening Session - Oak Ridge, TN

WATTS-BOYD REPORTING AGENCY
Kimberly A. Watts
P.O. Box 1105
Powell, Tennessee 37849
(423) 947-2127

PANEL

C. Rick Jones Presiding Official for the Hearing
Director, Office of Worker Protection
Programs and Hazards Management (EH-52)
Office of Environment, Safety and Health

Jacqueline Rogers Industrial Hygienist
Office of Occupational Safety and Health Policy (EH-51)
Office of Environment, Safety and Health

George Gebus Director, Office of Occupational
Medicine and Medical Surveillance(EH-61)
Office of Environment, Safety and Health

1 MR. JONES: Good morning and welcome. I am
2 Rick Jones, Director of the Office of Workers
3 Protection Programs and Hazards Management EH-52
4 within the Office of Worker Health and Safety. On
5 behalf of the Department of Energy, I would like to
6 thank you for taking the time to participate in this
7 public hearing concerning the proposed Chronic
8 Beryllium Disease Prevention Program (CDBPP),
9 particularly those of you who have come from some
10 distance.

11 The purpose of this hearing is to receive
12 oral testimony from the public on DOE's Notice of
13 Proposed Rulemaking, NOPR. Your comments are not
14 only appreciated, they are essential to the process.

15 The publishing of the NOPR that is the
16 subject of today's public hearing has been preceded
17 by two years of information gathering and data
18 analysis by the Department. In 1996, the Department
19 surveyed it's contractors to characterize the extent
20 of beryllium usage, the types of tasks involving
21 beryllium usage, the controls in place for each
22 task, and the estimated exposure levels associated
23 with each task. To supplement the data obtained from
24 the 1996 survey, the Department published a Federal
25 Register notice on December 30th, 1996 requesting

1 scientific data, information, and views relevant to
2 a DOE beryllium health standard. The survey and
3 Federal Register notice were followed by two

4 Beryllium Public Forums held in Albuquerque, New
5 Mexico and Oak Ridge, Tennessee January 1997. While
6 the Department moved forward with its rulemaking
7 process, an Interim Chronic Beryllium Disease
8 Prevention Program was issued on July 15, 1997, as
9 DOE Notice 440.1 to direct immediate action for the
10 protection of workers while rulemaking efforts
11 continued. The Interim Notice established a CBDPP
12 that enhanced and supplemented worker protection
13 programs already required by current worker safety
14 and health orders with provisions that are designed
15 to manage and control beryllium exposure hazards in
16 the DOE work place. Because of the complexity and
17 significance of issues regarding the development of
18 a DOE health standard for beryllium, a Beryllium
19 Rule Advisory Committee or BRAC was established in
20 June 1997 to advise the Department on issues
21 pertinent to the proposed rulemaking activity. DOE
22 also used the BRAC recommendations and the lessons
23 learned in the implementation of DOE Notice 440.1 to
24 develop this NOPR.

25 The objectives of the NOPR are to 1)

1 minimize the number of workers exposed to beryllium;
2 2) minimize the levels of beryllium exposure and the
3 potential for beryllium exposure; 3) establish
4 medical surveillance protocols to ensure early
5 detection of chronic beryllium disease; and 4)
6 assist affected workers who are dealing with
7 beryllium health effects. In addition, the
8 Department intends to collect and analyze exposure
9 and health data as a part of its ongoing
10 beryllium-related research efforts to ensure the
11 protection of workers' health. DOE will consider
12 amendments to its regulations as additional
13 information and feedback are collected.

14 If you have not read the Federal Register

15 notice from December 3, 1998, I urge you to do so.
16 Copies are available at the registration desk in the
17 back.

18 The comments received here today and those
19 submitted during the written comment period, which
20 ends March 9, will assist the Department in the
21 rulemaking process. All written comments must be
22 received by this date to ensure consideration by the
23 Department of Energy. The address for sending in
24 comments is: Jacqueline D. Rogers, U.S. Department
25 of Energy, Office of Environment, Safety and Health,

1 EH-51, Docket Number EH-RM-98-BRYLM, 1000

2 Independence Avenue SW, Washington, D.C., 20585.

3 As the Presiding Official for this hearing,
4 I would like to set forth the guidelines for
5 conducting the hearing and providing other pertinent
6 information. In approximately fourteen days, a
7 transcript of this hearing will be available for
8 inspection and copying at the Department of Energy's
9 Freedom of Information Reading Room in Washington,
10 DC as well as at the DOE Oak Ridge and Rocky Flats
11 Public Reading Rooms. The addresses are specified in
12 the Federal Register notice and are also available

13 at the registration desk. The transcript will also
14 be placed on the Environment, Safety and Health's
15 Chronic Beryllium Disease Prevention Program's
16 Internet web page which can be accessed at:
17 <http://tis.eh.doe.gov/be/>. In addition, anyone
18 wishing to purchase a copy of the transcript may
19 make their own arrangements with the transcribing
20 reporter.

21 This will not be an evidentiary or judicial
22 type of hearing. It will be conducted in accordance
23 with Section 553 of the Administrative Procedures
24 Act, 5 USC section 553 and section 501 of the DOE
25 Organization Act, 42 USC section 7191. To provide

1 the Department with as much pertinent information
2 and as many views as can reasonably be obtained, and
3 to enable interested persons to express their views,
4 the hearing will be conducted in accordance with the
5 following procedures: speakers will be called to
6 testify in the order indicated on the agenda;
7 speakers have been allotted ten minutes for their
8 verbal statement; anyone may make an unscheduled
9 oral statement after all scheduled speakers have
10 delivered their statements. To do so, please submit
11 your name to the registration desk in the back
12 before the conclusion of the last scheduled speaker;
13 and at the conclusion of all presentations,
14 scheduled and unscheduled speakers will be given the
15 opportunity to make a rebuttal or clarifying
16 statement. Again to do so, please submit your name
17 to the registration desk in the back.

18 Questions for the speakers will be asked
19 only by the members of the DOE panel conducting the
20 hearing.

21 As I explained, the purpose of this hearing
22 is to receive testimony from the public on the DOE's
23 Notice of Proposed Rulemaking. It is not the
24 purpose of this hearing to discuss individual
25 lawsuits that have been filed in court, or claims

1 that have been filed under the Federal Tort Claims
2 Act. This panel will therefore not discuss
3 litigation or claims. Instead, I urge all speakers
4 to provide this panel with their comments, opinions
5 and pertinent information about the proposed rule.

6 As mentioned before earlier, the close of
7 the comment period is March 9, 1999. All written
8 comments received will be available for public
9 inspection at the DOE Freedom of Information Reading
10 Room in Washington, D.C. which can be reached at
11 area code (202) 586-3142. Ten copies of the
12 comments are requested. If you have any questions
13 concerning the submission of written comments,
14 please see Andi Kasarsky at the registration desk.
15 She can be reached at area code (202) 586-3012.

16 Any person submitting information which he
17 or she believes to be confidential and exempt by law
18 from public disclosure should submit to the
19 Washington, D.C. written comments address a total of
20 four copies, one complete copy with the confidential
21 material included and three copies without the
22 confidential information. In accordance with the
23 procedures established at 10 CFR 1004.11, the
24 Department of Energy shall make its own
25 determination as to whether or not the information

1 will be exempt from public disclosure.

2 In keeping with the regulations of this
3 facility, there will be no smoking in this room. I
4 would also ask you to please take note of the four
5 exits, two in the front, two in the back. Also note
6 that restrooms, drinking fountain and pay phones are
7 located out at the rear exits and to the left.

8 We appreciate the time and effort you have
9 taken in preparing your statements and are pleased
10 to receive your comments and opinions. I would now
11 like to introduce the other members of the panel.
12 Joining me today to my left is Jacqueline Rogers,
13 who is an industrial hygienist from the Office of
14 Occupational Safety and Health Policy EH-51 within
15 the Office of Worker Health and Safety. Also
16 joining me today is Dr. George Gebus, Director of
17 the Office of Occupational Medicine and Medical
18 Surveillance EH-61 within the Office of Health
19 Studies. I would also like to acknowledge the
20 presence of managers, first line supervisors and
21 safety and health professionals from the local DOE
22 office, the Y12 Plant and Bechtel Jacobs.

23 This introduction has been lengthy, but I
24 hope useful. Now it is time to move on to the reason
25 why we are all here - to listen to your comments on

1 the Notice of Proposed Rulemaking. We would like to
2 call our first speaker on the agenda, and for the
3 record I ask that each speaker please state their
4 name and who they represent before making their
5 statement. According to the latest agenda, we have
6 one speaker this evening, Mr. Joe Moore, and I would
7 ask Mr. Moore to come down to the podium and make
8 your presentation please.

9 MR. MOORE: My name is Joe Moore and I'm
10 with Y12, Oak Ridge Plant. I'm a maintenance
11 supervisor up there. I got a few concerns I just
12 wanted to share with you here. In fact I've been
13 restricted from the beryllium work area but I also
14 notice that I'm still an asbestos supervisor also.
15 It seems like to me if you're restricted from one
16 area, you should be also restricted from another
17 area. It was just a concern that I had there and I
18 wanted to express. Also, I think we need some kind
19 of form or a web site which it was just mentioned
20 that we do have that, but still I don't believe the
21 information is getting to all of the people that has
22 been affected by the beryllium because I know I
23 talked to a couple of people after I left here this
24 morning and they was wondering how could they get
25 their statements in so it seems like we need to

1 maybe do a better job communicating or getting the
2 message out to the rest of the personnel. And also
3 if we have so much uncertainty regarding the
4 existing PEL, I feel we need to just go with the
5 full dress out until we get more data to find out,
6 you know, what the PEL that's needed because the
7 main thing we want to do is protect the individual
8 worker so we want to give them the best protection
9 they have. I noticed in the RAD program that if
10 they suspect any kind of airborne or whatever, it is
11 full dress out so we could probably take that same
12 program and move in the other direction. I believe
13 the mandatory medical surveillance would help find
14 more data also and help more people identify
15 beryllium concerns earlier. I think that's
16 something we need to look at because a lot of people
17 like I said might not want to participate but if
18 they have been affected, I think for their family
19 and for that purpose, they need to be somehow -- at
20 least get some kind of test ran on them. You might
21 not go the full works. I know I haven't been down to
22 the Vanderbilt place but after talking to some
23 people today, I feel I will probably go down and get
24 checked out further. I think also there should be
25 some kind of form of permanent insurance provided

1 for those that have been affected because it'll be
2 hard to get insurance if you have got that on your
3 medical record after you leave the plant so I think
4 some kind of permanent insurance should be provided.
5 And I don't know what kind of data for the next
6 generation, however that works, I don't know if the
7 offspring will be affected or not, but I guess
8 that's some concerns I have here. And then I want
9 to know I guess how will they be accomodated was
10 another concern for the next generation. And I guess
11 the last thing I did want to share was the message
12 about the public hearing today. I don't feel that
13 the information got out to the public very well
14 because I know it was yesterday when I really got
15 the message that they were having a discussion here
16 and I still didn't know it was a public hearing. I
17 just thought it was just going to be an information
18 session that was going to be here today so it's a
19 breakdown in communication somewhere and we've got
20 to somehow heal that process. So I don't know what
21 it would take, but it sounds like to me we need to
22 do a better job here. And I still haven't had time,
23 I guess to read all of that Federal Register yet but

24 I'm going to go back and read it and see if there's
25 a way I can get that information in before March 9th

1 so I will probably still maybe have a few more
2 concerns but that's the things I have on my mind
3 here.

4 MR. JONES: Thank you, Mr. Moore. Does the
5 panel have any questions for clarity?

6 MS. ROGERS: If the DOE considers producing
7 a form for providing worker comments to the web
8 site, what is the best way to get that information
9 to you?

10 MR. MOORE: If it gets down to the front
11 line supervisor, I will make sure my guys get it, so
12 if it comes down to the front line supervision, my
13 guys will get that information I'm sure so that's
14 one way I know of getting it down to them and we've
15 got an E-mail system too in the plant so maybe that
16 might get some of those that are may be not in the,
17 I guess the hourly ranks, that that affects, and
18 then you've got the required reader program so we've
19 got several ways I guess to get the message out.

20 MR. JONES: The beryllium support group
21 would be another alternative potentially to get the
22 word out.

23 MR. MOORE: Right.

24 MR. JONES: Thank you, sir. Appreciate
25 that very much. Do we have any other speakers

1 signed up? Would anybody at this time like to
2 provide any additional comments?

3 MR. FOSTER: Rick, Gary Foster. I would
4 like to.

5 MR. JONES: Again, just introduce yourself
6 and who you represent.

7 MR. FOSTER: I'm Gary Foster and I
8 represent myself. I've been diagnosed with
9 berylliosis and I would like to I guess add possibly
10 to the communication issues, and we do have several
11 avenues of communicating this sort of thing at the
12 Y12 plant. Possibly we're just not utilizing them.
13 I think the required reading, like Joe mentioned,
14 would have been quite useful. We could have done
15 that between December 3rd and now for sure. And
16 everybody doesn't have access to E-mail within the
17 plant and of course not everyone has internet
18 access. And the people at the beryllium support
19 group knew about this and we were possibly insulated
20 and didn't get the message out good ourself
21 throughout the hourly ranks or you know, even the
22 salary ranks. So my view, and I brought this up at
23 BRAC, is that as as it filters down through the
24 different levels of management, each manager passes
25 on what he thinks the next lower tier needs and by

1 the time it gets down to us at the shop floor, a lot
2 of times it doesn't even make it that far. Obviously
3 it doesn't even make it to the front line
4 supervisors, but we've got to do a better job in
5 communicating down to the shop floor, I think, the
6 notices. I think people don't understand the
7 rulemaking process, but this is the time to tell the
8 DOE what they feel is wrong with 850. I just wanted
9 to add to that. Thank you.

10 MR. JONES: Thank you, Mr. Foster.

11 Appreciate that. Anyone else at this time like to
12 make a statement? Okay, that being the case then, I
13 would like to adjourn the public hearing at this
14 time until we get additional speakers identified and
15 we will stay adjourned until we get additional
16 speakers or until nine o'clock when the hearing is
17 scheduled to officially adjourn, so thank you all
18 very much for your attendance and your insightful
19 comments and the hearing is adjourned at this time.

20 (Whereupon, the hearing was adjourned.)

21 MR. JONES: Before we adjourn the meeting,
22 is there any one else that would like to make any
23 presentation? That being the case, we would like to
24 officially adjourn the DOE Chronic Beryllium Disease
25 Prevention Program Notice of Proposed Rulemaking.

1 I would like to thank everyone for their cooperation
2 and attendance. We will be in Denver next week on
3 Tuesday and Washington next Thursday for those who
4 are interested. Thank you very much. Have a nice
5 evening and a safe trip home.

6 (Whereupon, the hearing was adjourned.)
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C E R T I F I C A T E

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STATE OF TENNESSEE:

COUNTY OF KNOX:

I, Kimberly A. Watts, Court Reporter and Notary Public at Large, do hereby certify that I reported in machine shorthand the above testimony, and that the foregoing pages, numbered 1 through 16, were typed under my personal supervision and constitutes a true and accurate record of the proceedings.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel, nor financially interested in the action.

Witness my hand and official seal this the 15th day of February, 1999.

KIMBERLY A. WATTS
Notary Public at Large
My Commission Expires: 5/26/99.